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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,294	01/19/2001	Carlos V. Perry JR.	06080003AA	6359

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EXAMINER

CINTINS, IVARS C

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/764,294

Applicant(s)
Perry

Examiner
Ivars Cintins

Art Unit
1724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 3, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-19 and 21-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-19 and 21-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15 and 24-29 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. It is not clear what material is represented by the term "polychloride" (claim 15, line 2). Also, the use of a "mattress-like filter" in the recited system appears to be critical and essential to the practice of the invention (see page 3, lines 13-17 of the specification). Since claims 24-29 do not recite this essential filter, or even any filter, these claims are not enabled by the disclosure. *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 24-29 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 15 is indefinite because it is

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not clear what material is represented by the term "polychloride." Claims 24-29 fail to recite the apparently essential filter; and therefore, these claims fail to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Also, the terms "the tank" (claims 25, 26 and 29, line 1; and claim 27, line 2) and "the sheet" (claim 28, line 1) lack antecedent basis in the claims, and are therefore indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 10, 11, 17 and 21-29 are rejected under 35

U.S.C. 102(b) as being anticipated by Jowett (U.S. Patent No. 5,997,747). The reference discloses (see Fig. 2) a system

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comprising a tank formed from a synthetic material (col. 5, line 26), a plurality of "mattress-like" filter elements containing synthetic material (col. 7, line 36) within the tank, fluid passageways integrally formed in both the bottom and sides of the tank, and a "sheet" material (i.e. bag, see col. col. 3, line 34 and col. 4, lines 34-35) located in a side passageway, and an inlet pipe (i.e. 29) which extends from an interior to an exterior of the tank; and this is all that is required by claims 10, 11, 17 and 21-29. Applicant should note that the passageway **38** between the unnumbered flange (i.e. to its right) and the side of container **40** is both integrally formed and is located in the side of the tank (see Fig. 2). Applicant should further note that the continuation of this passageway between the bottom of this flange and the inward indentation (i.e. rib) at the lower left hand portion of the container) is also integrally formed, and is located in the bottom of the tank, as required by claims 10 and 24.

Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by TenBrink (U.S. Patent No. 5,979,091). The reference discloses a tank having a bottom and sides, and troughs integrally formed in at least the bottom and sides of the tank (see col. 3, lines 60-65); and this is all that is required by

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claim 24. Applicant should note that the intended use of a device (i.e. in a septic system) is not a structural limitation, and hence cannot be relied upon to patentably distinguish an apparatus claim. It is well settled that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claims 24-26 and 29 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Berg et al. (U.S. Patent No. 6,280,614). The reference discloses a septic tank having all of the recited elements. See col. 2, lines 45 and 65; and col. 4, lines 18-20.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jowett in view of Hirs (U.S. Patent No. 3,814,247). Jowett discloses the claimed invention with the

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exception of the use of diverse filtering materials, including a synthetic material such as polypropylene. Hirs discloses polypropylene particles as a filtering material (see col. 2, lines 19-22 and 64-65), and further teaches the use of filtering materials having different particle sizes (col. 2, lines 51-52 and 63-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of Jowett with the filtering materials of Hirs, in order to further purify the liquid undergoing treatment in this primary reference system. Such modification is deemed to be especially obvious in view of the disclosure by Jowett (see col. 1, lines 58-59) that mixing iron oxide with sand has been considered.

Applicant's arguments filed December 31, 2002 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that claims 24-29 are directed to a tank; and therefore, the use of a filtering system is not required. It is pointed out, however, that the entire disclosure suggests that Applicant's invention is directed to a filter for a recirculating tank used in a septic system. See the title of the invention; the field of the invention (page 1, lines 9-11 of the specification); the summary of the invention (page 3, lines 13-17 of the specification); the detailed description of the invention (page 5, lines 4-5 of the

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specification); and the abstract. Accordingly, the use of a tank alone, i.e. without a filter, is not enabled by the disclosure; and claims directed to only a tank do not particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant also argues that Jowett does not show troughs integrally molded or formed in the side and bottom of the tank. Applicant further asserts, citing Merriam Webster's Collegiate Dictionary (10th edition), that passage **38** of this reference system does not constitute a "trough" as required by some of the claims in this application. It is pointed out, however, that while this dictionary defines a "trough" as a "shallow channel or depression" (definition **2b**); this same dictionary defines this term as "a conduit, drain, or channel for water" (see definition **2a**). Since passageway **38** of Jowett is clearly a conduit (i.e. for water), this passageway is deemed to be structurally indistinguishable from the recited "trough."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are

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unsuccessful, the examiner's supervisor, Mr. Thomas Dunn, can be reached at (703) 308-3318.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

I. Cintins
May 17, 2003


Ivars C. Cintins
Primary Examiner
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